



STATE OF NEWYORK DEPARTMENT OF HEALTH

*Rec'd 10/25/02
fm*

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 24, 2002

Michael Fiore, Director
Division of Integrated Health Systems/CMSO
Centers for Medicare and Medicaid
7500 Security Boulevard
Mailstop S2-01-16
Baltimore, Maryland 21244-1850

Dear Mr. Fiore:

I am responding to the questions posed to the State by Julie Jones and Michael Melendez regarding New York's application seeking to renew the waiver for the Medicaid Non-Emergency Transportation Program. These questions were raised after your staff reviewed our August 26, 2002 response to the questions posed by the Centers for Medicare and Medicaid Services on our original submission.

As requested, we are enclosing a copy of a 1992 Administrative Directive, "Transportation for Medical Care and Services: Title 18 New York Code of Rules and Regulations Part 505.10." This document further clarifies the scope of the transportation program. Periodic updates are given to providers, through the Department's monthly publication, Medicaid Update, and to district staff through administrative directives and email correspondence.

Regarding your request for more information to our response to Question #12, the State has developed the following timeline in which recipient complaints are addressed:

1. Receipt of complaint, and forwarding the complaint to appropriate party for investigation: 1 working day.
2. Investigation of complaint: 3 working days.
3. Resolution of complaint communicated to appropriate parties: 1 working day.

It is the State's understanding that most complaints are addressed and resolved in fewer than 5 working days. We will notify districts of this new time frame.

Regarding your request for more information to our response to Question #16, most contracts with coordinators are for 3 years, though some contracts may be for less

or more years. The contract typically allows a cost of living annual increase. The fiscal impact of a significant change in utilization is considered in future years. No change is made to the contracted amount during the year of operation. However, if an unexpected change in utilization occurs that significantly impacts a contractor's ability to provide service, we have worked with districts and their contractor to renegotiate a rate that assures access, but is below what would have been paid fee-for-service. For example, in one of our waiver programs covering Albany, Schenectady and Rensselaer Counties, managed care programs dropped transportation services from their plans, resulting in a significant increase in utilization that was not considered when rates were negotiated.

We also have reviewed the fiscal analysis for the two waivers, Chautauqua County, and Albany, Schenectady, and Rensselaer Counties. Mr. Melendez pointed out that, for Fiscal Year 2000, the State claimed an Annual Savings (Line 8). However, it appears that this is wrong, when the Actual Expenditures (Line 7) is subtracted from the Target Expenditures (Line 6).

The calculations are correct. Our claim for an Annual Savings for Fiscal Year 2000 was determined by subtracting the *Actual Expenditures* (Line 8) from the *Anticipated Expenditures Without a Waiver Implementation* (Line 5). While Actual Expenditures (Line 7) were more than the Target Expenditures (Line 6, which is the 5% reduction from Anticipated Expenditures Without a Waiver), the waiver did save money during that fiscal year.

If we can clarify any additional information, please contact me at (518) 474-9219.

Sincerely,



Marilyn Desmond, Assistant Director
Division of Policy and Program Guidance
Office of Medicaid Management

Enclosure

cc: Mr. Melendez

Ms. Jones

Ms. Kuhmerker

Mr. Fanning

Ms. Fuller

ADMINISTRATIVE DIRECTIVE 92 ADM-21

TRANSPORTATION FOR MEDICAL CARE AND SERVICES:
TITLE 18 NEW YORK CODE OF RULES AND REGULATIONS
PART 505.10

ISSUED: JUNE 2, 1992

I. Purpose

This Directive informs social services district staff of revisions to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) 505.10, "Transportation for Medical care and Services".

This ADM outlines the programmatic implications of the revisions as follows:

- A. Definition of Terminology;
- B. Clarification of Existing Medical Assistance Transportation Policy;
- C. Conformity of State Regulation with Federal Policy;
- D. Licensure Requirements of Transportation Providers;
- E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B;
- F. Qualified Orderers of Ambulance and Ambulette Transportation;
- G. Changes Requested by Social Services Districts and Other Sources; and,
- H. Medical Transportation Expenditure Claiming Procedures

II. Background

The previous version of 18 NYCRR 505.10 was last amended in 1981. Since that time, changes in the Medical Assistance (MA) program, as well as new licensure requirements for transportation vendors, resulted in various departmental policy statements which clarified the scope and intent of this regulation. Additionally, several court cases have broadened the effect of this regulation beyond its original intent. The revised regulation clearly defines the purpose and range of transportation under the MA program.

III. Program Implications

A. Definition of Terminology

certain terms which are commonly used in the MA transportation program are now defined in 18 NYCRR 505.10, as follows:

- 1. Ambulance. An ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

2. Ambulance Service. A certified ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.
3. Emergency Ambulance Transportation. Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening, or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.
4. Non-Emergency Ambulance Transportation ambulance transportation means the provision of ambulance transportation for the purpose of obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation in a recumbent position.
5. Emergency Medical Services. Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.
6. Ambulette. An ambulette, or invalid coach, means a special-purpose vehicle, designed and equipped to provide non-emergency care, that has either wheelchair-carrying capacity or the ability to carry disabled individuals.
7. Ambulette Service. An ambulette service means an individual, partnership, association, corporation, or any other legal entity which transports the ~~mid~~ infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the ~~mid~~ infirm or disabled with personal assistance entering and exiting their residences, the ambulette, and a facility which provides medical care.
8. Prior Authorization. Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

9. Prior Authorization Official. Prior authorization official means the department, a social services district, or their designated agents.
10. Conditional Liability. Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.
11. Common Medical Marketing Area. Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.
12. Community. Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.
13. Locally Established Rate. Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.
14. Locally Prevailing Rate. Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.
15. Ordering Practitioner. Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.
16. Day Treatment Program or Continuing Treatment Program. Day treatment program or continuing treatment Program means a planned combination of diagnostic, treatment and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.

17. Transportation Attendant. Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.
18. Transportation Expenses. Transportation expenses means:
 - i. the costs of transportation services; and
 - ii. the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.
19. Transportation Services. Transportation services means:
 - i. transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and
 - ii. a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.
20. Vendor. Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services *directly* from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or *other* individual who transports an MA recipient by means of a private vehicle.
21. Undue Financial Hardship. Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

B. Clarification of Existing Medical Assistance Transportation policy

Section 505.10 provides clarification of current policy for the authorization and payment of MA transportation as follows:

1. The transportation must be provided to an MA recipient.

Example 1: The parent of a hospitalized child, who is receiving MA, is required to go to the hospital for

periodic consultations regarding the scope of the child's on-going medical care. The parent's transportation expenses for these medical consultations may be reimbursable under the MA program (based on medical necessity) only if the parent is an MA recipient. If the parent is not a recipient of MA, the transportation expenses are not covered. (However, when a child travels to medical care and services, an attendant is required. It is expected that the parent or guardian of the child will act as attendant. In these situations, the costs of transportation, lodging and meals of the parent or guardian may be reimbursable regardless of the parent or guardian's MA eligibility.)

2. The transportation must be made to or from a necessary care or service which may be paid for under the MA program.

Example 1: An MA recipient requests reimbursement for transportation expenses to an Alcoholics Anonymous meeting or some other self-help group. Reimbursement for transportation expenses should not be authorized as these programs are not paid for under the MA program.

Example 2: A physician has ordered that it is medically necessary for a 55 year old developmentally disabled MA recipient to attend a sheltered workshop program in order for the recipient to maintain physical and mental health. The physician has further ordered that it is medically necessary for the MA recipient to travel by ambulette. Even though a physician has ordered this program and specified the mode of transportation, transportation should not be authorized since a sheltered workshop program is not a service covered under the MA program.

Example 3: A young, chronically-ill mother of two children is residing in a long-term-care facility. This MA recipient's attending physician has approved a home visit for the recipient and included this order in the recipient's therapeutic plan of care. This transportation home should not be authorized since the recipient is not being transported to an MA covered service.

Example 4: A 25 year old developmentally disabled Intermediate Care Facility (ICF) resident is ordered by the ICF's attending physician to participate in a summer camp program. This transportation should not be authorized since a summer camp program is not a service covered under Medicaid.

Example 5: An MA recipient has an appointment with a physician who has not been excluded from enrollment in the MA program, but who has voluntarily chosen not to enroll as an MA provider. Transportation to this appointment can be authorized since physician services are covered under the MA program.

3. Payment will be made only for the least expensive available mode of transportation. The least expensive available mode of transportation must be suitable to the MA recipient's needs as determined by the prior authorization official.

Example 1: An MA recipient has access to a bus line and is physically able to use a bus to travel to necessary medical care and services. The prior authorization official has determined that a bus token(s) is less expensive than private vehicle mileage reimbursement. However, the MA recipient wishes to use a private vehicle. Even though the recipient prefers to use a private car the local social services district can limit reimbursement to a bus token(s). No reimbursement should be made if the bus is not used.

4. Payment will be made to a vendor only for services provided where an MA recipient is actually being transported in the vehicle. Payment will not be available for non-passenger occupied time.

Example 1: An ambulette arrives at a recipient's home for a scheduled appointment. The recipient is not at home; therefore, no trip is made. The vendor should not be reimbursed for *this* service since the MA recipient was not transported in the vehicle.

Example 2: An ambulette arrives at a physician's office to pick up a recipient and return the recipient to the recipient's home. The pick-up is scheduled for 1:00 P.M. The recipient does not leave the physician's office until 1:20 P.M. The ambulette company should not be reimbursed an extra amount for this additional 20 minutes waiting time since the MA recipient was not in the vehicle.

During some long-distance trips, it may be appropriate for the vendor to wait for the recipient rather than return to the vendor's base of operation. Social services districts may choose to establish an enhanced base rate for this type of trip, but no specific fee should be designated for waiting time.

5. Transportation should take place within the common medical marketing area, which means the geographic area from which a community customarily obtains its medical care and services. While recipients may exercise freedom of choice in the selection of medical care and service providers, this does not mean that the local social services district must pay for transportation to medical care and service outside the common medical marketing area when the same care and service is available locally.

When authorizing long-distance transportation social services districts must ensure that the medical care and services required by the recipient are not readily available within the recipient's common medical marketing area. The appropriateness of reimbursement for long-distance transportation should be decided by the prior authorization official after a careful consideration of relevant factors such as location of service and recipient, medical need, recipient's personal circumstances and continuity of medical care.

Example 1: An MA recipient residing in Albany wishes to consult a medical provider located in Syracuse, which is outside the recipient's common medical marketing area. If this same type of provider is available within the Albany area, the prior authorization official may, after consideration of all criteria set forth in section 505.10(d)(7), deny for transportation to the medical provider located in Syracuse. In this instance, medical care and services are available within the recipient's common medical marketing area; therefore, payment for transportation outside the area is not essential in order for the recipient to obtain needed medical care. If the recipient chooses to go to the out of area medical provider, no transportation should be provided as appropriate medical care within the common medical marketing area has been assured.

Example 2: A pregnant woman, who changes residence from one social services district to another, may need to consult with her original physician in her former district of residence for a period of time before an adequate transfer of care to a new local provider can be accomplished. Reimbursement for transportation to the out of area physician could be provided for as long a period as consultation with this physician is medically necessary.

C. Conformity of State Regulation with Federal Policy

The Code of Federal Regulations (42 CFR 431.53) requires states participating in the Medicaid program to assure necessary transportation to and from providers of medical care and services which are covered under the states' Medicaid programs. Assuring transportation does not necessarily mean payment for transportation. This federal requirement to assure necessary transportation can be met in a variety of ways, including:

1. The use of transportation services which are ordinarily made available to other persons in the community without charge;
2. The use of volunteer services;
3. Payment to a vendor of transportation services; or,
4. ~~Reimbursement~~ to MA recipients for the use of a private vehicle or mass transportation.

Social services districts can reasonably assume that recipients have some form of transportation available to them for their usual activities of daily living. If a recipient has access to and can make use of the mode of transportation generally used for the usual activities of daily living (such as shopping, recreation, worship services), the recipient should use this mode of transportation to travel to medical appointments. Reimbursement for this mode of transportation does not have to be made. The prior authorization official may authorize payment, however, where the failure to do so would cause the recipient undue financial hardship. If the recipient's normal mode of transportation is available, reimbursement is not necessary for transportation to occasional medical treatment.

Example 1: A rural county resident regularly travels 25 miles one way in her personal vehicle to the county seat in order to ~~sh~~ for food, clothes, and other household items. ~~Reimbursement~~ for occasional transportation to the same city for medical appointments can be denied.

Example 2: An ambulatory individual living in a city resides five blocks from a bus route which interconnects with other bus routes throughout the city. When the individual must travel to the site of a medical practitioner which is in the catchment area of the bus routes, the district can reasonably expect the individual to use the bus and can deny reimbursement for the cost of the token.

Example 3: A department in a rural county provides van transportation of recipients to a major medical center in a neighboring county on Tuesdays and Fridays of each week. For

non-urgent medical appointments to the center, the department can expect recipients to schedule appointments far and use the van on Tuesdays or Fridays. Reimbursement for personal vehicle mileage to the van pickup site can be denied.

An MA recipient may use a private vehicle or mass transit for the usual activities of daily living. Reimbursement may be made for these modes of transportation when the use of these modes without reimbursement would constitute an undue financial hardship for the MA recipient. The prior authorization official must decide whether or not to reimburse for these situations on a case by case basis. For mileage in a private vehicle, when authorized, is assumed to be round-trip even if the MA recipient does not return with the driver to the origin point but remains in a medical facility.

Example 4: An MA recipient, diagnosed with a short-term illness requires multiple medical visits within a short period of time. The frequency of these visits may provide a reason for the social services district to reimburse the MA recipient for transportation expenses.

Example 5: A child with an unusual heart problem, residing in the city of Buffalo, may need to access medical services at a New York City hospital specializing in children's diseases. Although located outside the recipient's common medical marketing area, the social services district should reimburse for this long-distance transportation if it is necessary to assure appropriate medical care. In this type of circumstance it may be necessary for the MA recipient to access medical care and services located outside the common medical marketing area. When long distance travel is required, the social services district should provide reimbursement as the cost of transportation is excessive.

While a recipient may, in general circumstances, access medical care and services through use of a private vehicle or mass transit, a severe illness may necessitate the use of a higher mode of transport. If a higher mode of transport is required, the recipient would not be expected to assume this cost.

Example 6: An MA recipient is generally able to use the mass transit system for medical appointments and other daily activities. Reimbursement for this MA recipient's transportation is not being paid by the social services district. This recipient suffers a sprained ankle and cannot use the mass transit system. A higher mode of transport, in this case a taxi, is required. The social services district may wish to reimburse for transportation expenses in this situation as the cost of this higher mode of transport, without reimbursement, may be an undue financial hardship to the recipient.

An elderly recipient, generally driven to medical appointments by a family member, breaks a leg and is now unable to utilize a private vehicle for transportation to necessary medical appointments. An ambulette is necessary and is ordered by the attending physician. The recipient would not be expected to assume the cost of this higher mode of transport. In these cases, social services districts should provide payment for transportation expenses.

Example 7: A mother and her small children who normally take a bus to medical appointments cannot use mass transit due to icy or snowy weather. _____ to this recipient for a safer and more accessible method of transportation (private vehicle or taxi) may be appropriate.

Procedures for denial of transportation reimbursement should be included as part of the social services district's transportation plan.

Recipients who request reimbursement and are denied reimbursement for transportation expenses must be informed of their right to a fair hearing.

The prior authorization official should consider a number of factors when deciding whether or not to authorize reimbursement for a recipient's private transportation expenses. These factors include but are not limited to :

1. Frequency of medical appointments;
2. Distance to be traveled;
3. Continuity of medical care;
4. Medical condition of the recipient;
5. Weather conditions;
6. Availability of the recipient's usual mode of transportation;
7. Undue financial hardship to the recipient if _____ is not authorized; and,
- a. Any other circumstance which may affect the recipient's ability to access needed medical care and services.

D. Licensure Requirements of Transportation Providers

Section 505.10(d)(6) establishes licensure requirements for transportation providers, as follows:

1. Ambulance services must be certified or registered by the Department of Health and comply with all _____ of that department.
2. Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law.

Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.

3. Taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality.
4. Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

Payment to vendors will be made only when they meet the above requirements on the date the services are rendered.

E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B

Chapter 763 of the Laws of 1989 mandated that ambulance providers be paid the full deductible and coinsurance amounts of an approved Medicare Part B claim for the transportation of MA eligible persons who are covered under Medicare Part B. Section 505.10(c)(1) now reflects this legislation. Prior authorization of non-emergency ambulance transportation is not required for ambulance claims in which there is a Medicare Part B approved amount. Approval by Medicare of an ambulance transport will be deemed appropriate approval for MA purposes.

Prior authorization will still be required for non-emergency ambulance transportation for which there is no Medicare Part B coverage.

F. Qualified Orderers of Ambulance and Ambulette Transportation

Section 505.10(c)(4) allows an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner to order non-emergency ambulance transportation. Ambulette transportation may be ordered by an ordering practitioner who is the MA recipient's attending physician,

physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the social services district and approved by the Department. If a social services district wishes to include additional ordering provider groups the district must submit such request to the Division of Medical Assistance for approval as part of their social services district's Title XIX Medical Transportation Plan.

G. Changes Requested by Social Services Districts and Other Sources

1. Vendors of transportation services must provide pertinent cost data to a social services district upon request. The request should be for any pertinent cost data which would aid the social services district in containing expenditures or establishing rates. Social services districts may request this data as long as the request does not place an additional financial cost on the vendor. An example of an additional financial cost would be a request for a certified cost document when such a certified cost document does not exist. Additional financial cost does not mean the cost of photocopying financial documents or computer generated printouts of financial documents. These procedures should be readily and inexpensively available to the vendor. Failure to comply with the social services district request may result in the vendor's termination from the MA program.

This provision is not intended to encourage the development of cost-based rates. A variety of factors should be included in the rate setting process.

2. Social services districts must notify applicants for and recipients of MA of the procedures for obtaining prior authorization of transportation services. Several recent court decisions granted recipients retroactive reimbursement for private vehicle transportation costs because these recipients were never notified by the social services district that the potential for MA transportation reimbursement existed. Information regarding the availability of reimbursement for prior authorized private medical transportation expenses is included in the revised client information booklets DSS-4148A and DSS-4148B.
3. A court found that the previous version of Section 505.10 required social services districts to negotiate with vendors in the rate setting process. The use of the term "negotiate" has been eliminated from the language of the regulation. Section 505.10 now permits rates to be established by the local social services official at a level which assures transportation for MA recipients to necessary medical care and services.

Negotiation may be included as part of the rate-setting process if the social services district so desires, but negotiation is not required.

H. Medical Transportation Expenditures Claiming Procedures

1. All medical transportation services furnished by an entity to which a direct vendor payment can be made are claimable for reimbursement as program assistance costs.
2. All non-vendor medical transportation payments should be claimed for reimbursement as administrative costs. These non-vendor payments include, but are not limited to, the following:
 - a. reimbursement to recipients for approved medical transportation;
 - b. costs of meals or lodging enroute to and from medical care;
 - c. cost of a transportation attendant to accompany the the recipient, if necessary, and the costs of the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family;
 - d. cost of bus and subway tokens purchased by the social services district for distribution to recipients;
 - e. payments to a party which is not the provider of the transportation services.

IV. Required Action

social services district staff must follow the provisions of this release in authorizing and making payment for transportation services for MA eligible persons.

If any changes in social services district's procedures occur, the social services district must submit these changes in writing to the department for approval and amendment of the social services district's transportation plan.

V. System Implications

None.

Date June 2, 1992

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VI. Effective Date

The Directive is effective July 1, 1992 retroactive to April 1, 1992.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance